The Supreme Court of the United States has held that railroads are not required to be common carriers of other common carriers. *The Express Cases,* 117 U. S. 1. On this ground contracts limiting liability to express messengers have been held valid. *B. & O. Ry. Co.* v. *Voight,* 176 U. S. 498; *Perry* v. *Phila. B. & W. R. Co.* (Del.), 77 Atl. 725. *Contra,* 10 HARV. LAW REV. 310. In the absence of any contract, however, courts have classed express messengers with passengers and required the same degree of care from the railroad company. *Blair* v. *Erie R. Co.,* 66 N. Y. 313, 23 Am. Rep. 55; *Missouri, K. & T. Ry. Co.* v. *Blalack* (Tex.), 147 S. W. 559. An excellent middle ground was taken in one case, where, while holding the contract void, the court required the same duty of the railroad company as it owes to its own employees. *C. & N. W. Ry. Co.* v. *O'Brien,* 132 Fed. 593. Postal clerks have been placed almost uniformly in the role of passengers. This seems to be the proper rule since no contract exempting railroad companies from liability is required and the government pays their fare. *Seybolt* v. *N. Y. L. E. & W. R. Co.,* 95 N. Y. 562, 47 Am. Rep. 75; *Southern Ry. Co.* v. *Harrington,* 166 Ala. 630, 52 So. 57; *Norfolk & W. R. Co.* v. *Shoot,* 92 Va. 34, 22 S. E. 811. *Contra, Foreman* v. *Pa. R. Co.,* 195 Pa. St. 499, 46 Atl. 109. A railroad company transporting a circus is not liable as a common carrier and may validly stipulate for exemption from liability. *Sager* v. *Northern P. Ry. Co.,* 166 Fed. 526; *Kelly* v. *Grand Trunk W. Ry. Co.,* 46 Ind. App. 697, 93 N. E. 616.

The weight of authority is against the decision in the principal case, and from analogy with the cases cited above, the rule that a contract limiting liability is valid seems to be correct. *McDermon* v. *Southern Pac. Co.,* 122 Fed. 669; *Denver & R. G. R. Co.* v. *Whan,* 39 Colo. 230, 89 Pac. 39, 11 L. R. A. (N. S.) 432; *Russell* v. *Pittsburg, etc., Ry. Co.,* 157 Ind. 305, 61 N. E. 678, 87 Am. St. Rep. 214, 55 L. R. A. 253; *Chicago, etc., Ry. Co.* v. *Hamler,* 215 Ill. 525, 74 N. E. 705, 106 Am. St. Rep. 187, 1 L. R. A. (N. S.) 674. In all of the cases the same contract was in issue and though the majority of the courts decided for its validity, a few have held it void and allowed recovery. *Jones* v. *St. Louis S. R. Co.,* 125 Mo. 666, 28 S. W. 883, 26 L. R. A. 718.

CONSTITUTIONAL LAW—COMMERCE—STATE TAX FOR DOING LOCAL BUSINESS.—Massachusetts taxed the plaintiffs, foreign corporations engaged in both interstate and intrastate business, under a statute providing that "Every foreign corporation shall, in each year, at the time of filing its annual certificate of condition, pay to the treasurer and receiver-general, for the use of the commonwealth, an excise tax, of one-fiftieth of one per cent of the par value of its authorized capital stock as stated in its annual certificate of condition; but the amount of such excise tax shall not in any one year exceed the sum of $2,000." The plaintiffs attacked the statute as being an interference with interstate commerce and hence unconstitutional. *Held,* the statute is constitutional, as the local and domestic business, for the privilege of doing which the state had imposed a tax, was real and substantial, and not so connected with interstate commerce as to render a tax upon it a burden upon the

interstate business of the companies involved. *Baltic Mining Co.* v. *Massachusetts,* 34 Sup. Ct. 15. See NOTES, p. 477.

CONTRACTS—CONSIDERATION—MORAL OBLIGATION.—The defendant made a composition agreement with his creditors, expressly reserving from the operation of said agreement a moral obligation to pay one of the creditors in full. *Held,* the moral obligation reserved is sufficient consideration for a subsequent promise to pay. *Strius* v. *Cunningham,* 114 N. Y. Supp. 1014 (App. Div.).

It has been held that, where a debtor issues a circular letter to his creditors in which he assumed a moral obligation to buy back later certain securities, in consideration of the creditors then accepting such securities at an arbitrary valuation sufficient to settle the claim, this moral obligation constitutes adequate consideration for a subsequent promise to pay, even though the original claim was voluntarily released. *Taylor* v. *Hotchkiss,* 179 N. Y. 546, 71 N. E. 1140. This rule is followed in the principal case. There is, however, an almost unbroken line of authority to the effect that if the debt is discharged by the voluntary act of the parties a subsequent promise is invalid without new consideration to support it. *Warren* v. *Whitney,* 24 Me. 561, 41 Am. Dec. 406; *Rasmussen* v. *State National Bank,* 11 Colo. 301, 18 Pac. 28. Although when the discharge is involuntary by operation of law the cases are practically unanimous in holding that the moral obligation is sufficient consideration to support a new promise to pay. *Mutual Reserve, etc., Co.* v. *Beatty,* 35 C. C. A. 573, 93 Fed. 747; *Ross* v. *Jordan,* 62 Ga. 298. It would seem that the reservation of a moral obligation does not constitute consideration except under the New York rule as laid down in *Taylor* v. *Hotchkiss, supra.*

FEDERAL EMPLOYER'S LIABILITY ACT—INSTANTANEOUS DEATH.—The plaintiff sued under the Federal Employer's Liability Act, as father and administrator of his adult son who, while an employee, was killed instantaneously in a railroad accident, leaving no widow, child or mother. There was no evidence to show that the plaintiff was entitled to or had any reasonable expectation of financial support from his son. *Held,* there can be no recovery. *Carolina, C. & O. R. Co.* v. *Shewalter* (Tenn.), 161 S. W. 1136.

Act April 22, 1908, c. 149, sec. 1 (U. S. Comp. St. Supp. 1911, p. 1322) allows damages to the person injured, or in case of death, to his personal representative, for the benefit of certain designated beneficiaries. But when the suit is by the injured person, it does not survive him, in accordance with the maxim, *"actio personalis moritur cum persona." Fulgham* v. *Midland Valley R. Co.,* 167 Fed. 660; *Walsh* v. *New York, etc., R. Co.,* 173 Fed. 494. This led to the addition of Sec. 9, by act of April 5, 1910, allowing survival of this right of action. But as held in the principal case, this provision is inapplicable when the death is instantaneous, since at no time has the injured person a cause of action, and hence there is nothing to survive. It has been often so held with regard to similar "survival statutes" in the states. *Illinois Central R. Co.* v. *Pen-*